IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1278 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJNIBEN MANHARLAL BHAGAT

Versus

STATE OF GUJARAT

Appearance:
MR GM AMIN for Petitioner No. 1
MR AJ DESAI, AGP for Respondents

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 14/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

By way of this petiton, the petitioner has sought order

or direction from this Court to the effect that respondents be directed to initiate proceedings under the provisions of the Land Acquisition Act in respect of the petitioner's land bearing survey No.42/1 admeasuring 98 acre 30 gunthas situated in the sim village Umarkot, Tal: Palanpur, Dist: Banaskantha and to give further direction to declare award for the said lands and disburse the compensation with running interest at the rate of 18 per cent from the date of taking over possession.

A few material and relevant facts may be stated, at this stage. The petitioner's father, late D.S.Patel, had purchased land bearing survey No.42 admeasuring 947 acres 39 gunthas from the Nawab of Palanpur. It was being cultivated and part of which was used as poultry farm. In 1954, upon re-survey, on 6.5.61, the original owner's land was marked and identified to be admeasuring 902 acres and 28 gunthas instead of 947 acres and 39 gunthas. In the year 1963, under the provisions of the Act, land admeasuring 192 acres 8 gunthas of survey No.42/1 of late D.S.Patel's farm was reserved for Dantiwada Dam by letter dated 7.1.63. It is the case of the petitioner that though the actual possession of 98 acres 30 gunthas was taken, no compensation was paid till today. In the year 1971, under the Agricultural Land Ceiling Act, out of 902 acres and 28 gunthas of land, 748 acres and 18 gunthas came to be declared as excess land.

The petitioner, on 15.3.1991, wrote to the Collector, Banaskantha for getting compensation of if survey No.42/1 admeasuring 328 acres and 9 gunthas with 18 per cent interest, after the acquisition proceedings under the Land Acquisition Act. The Deputy Collector, then wrote to the Section Officer of the Revenue Department that the petitioner's land bearing survey No.42/1 admeasuring 98 acres and 30 gunthas was submerged in the Dantiwada irrigation Project and though draft award was prepared, no amount of compensation was paid. It was pointed out that the petitioner is entitled to be paid compensation with 18 per cent interest, by the letter, dated 10.2.92. Again, by letter dated 8.2.93, Deputy Collector informed that the proceedings for compensation are in process subject to the petitioner giving an undertaking that the petitioner will not challenge the acquisition proceedings. In the meantime, in the year, 1991, Mamlatdar, Palanpur, acting as Ceiling Tribunal had passed order in Ceiling Case No.19/81 that the petitioner's land bearing survey No.42/1 admeasuring 329 acres and 9 gunthas was held as excess land and, therefore, he had determined the amount of compensation

under the Gujarat Agriculture Lands Ceiling Act and he had offered compensation of Rs.22,752.50 ps. and for construction, trees etc. total amount of compensation of Rs.97,691.30 ps was declared. Out of the said amount, an amount of Rs.4691.30 ps. was ordered to be paid in cash and remaining amount of Rs.93,000 was ordered to be paid in Government bonds, pursuant to the order dated 20.11.91.

After exchange of letters and correspondence between the petitioner and the revenue authorities, ratification in the earlier order came to be made on 31.5.2000 and on 19.6.2000, the concerned Mamlatdar sent the payment. The petitioner stated that the amount was with regard to the compensation under the Ceiling Act for which the amount of compensation was determined under the Ceiling Act and in so far as remaining land of 98 acres 30 gunthas was concerned, no proceedings were initiated since it was not within the jurisdiction of the Mamlatdar and Ceiling Tribunal. The petitioner, therefore, went on pursuing and demanding initiation of proceedings for acquisition in respect of land of survey No.42/1 admeasuring 92 acres and 30 gunthas. The petitioner also, served notice to the concerned officers of the Dantiwada Project. In short, the contention of the petitioner is that proceedings for the acquisition and resultant award for aforesaid remaining parcel of land had not been started which compelled him to take recourse to the constitutional remedy under Article 226 of the Constitution of India.

The respondent authority by filing affidavit in reply has stated that:

(1) In Special Civil Application No.332/95 decided on 17.8.98/4.9.98, the possession of total 472 acres and 30 gunthas of land was taken over by the Government which was inclusive of 98 acres and 30 gunthas and it was decided to pay compensation qua the land admeasuring 98 acres and 30 gunthas under the provisions of Gujarat Agriculture Land (Ceiling & Regulation) Act. Pursuant to the direction given by this Court, Mamlatdar had decided case No.1/99, whereby, an amount of Rs.15,150/- came to be fixed and further process of payment is in progress.

(2) In the said order, an amount of Rs.6840/- is towards compensation of land and an amount of Rs.8310/- towards interest.

(3) That the land bearing survey No.42/1 has gone in below water level and the same has been passed on to the Irrigation Department on 5.3.86. The Dantiwada Dam Project which caused submergence of the land was completed in the year 1973 and since then the land admeasuring 98 acres 30 gunthas of survey No.42/1 was covered by the Dantiwada dam and the land is not within the possession of the petitioner and that direction was issued to pay compensation under Gujarat Agriculture Land (Ceiling and Regulation) Act.

(4) That the Mamlatdar and Krishipanch of Palanpur had passed order dated 21.12.63 by which it was declared that land admeasuring 472 acres and 30 gunthas was declared excess land.

(5) That land admeasuring 120 acres was declared as holding and land admeasuring 246 acres was declared as purchase right under Tenancy Act and land admeasuring 103 acres and 4 gunthas was declared as exemptible land as the land was having fruit-bearing trees. That on actual measurement of excess land admeasuring 426 acres 39 gunthas were found and the said area of 98 acres 30 gunthas are covered with regard to the said land the award of compensation dated 30.12.99 came to be passed.

(6) That during the pendency of the acquisition proceedings of land for Dantiwada dam, the draft award was sent to the Government for approval which came to be approved with corrections. But as the proceedings under the Land Ceiling Act was going on, no award was declared. That later on under the Agricultural Land Ceiling Act award was published with regard to 328 acres 9 gunthas land and it was ordered to pay compensation at Rs.97691.30 of which an amount of Rs.4691/- was paid by cash and the demand was raised to call for the bond from Reserve Bank of Rs.93000/-. That further along with the same it was ordered to pay Rs.15,150/- with regard to land admeasuring 98 acres 30 gunthas under the Agricultural Land Ceiling Act and in the same the process of payment of Rs.150 by cash is in progress and for the amount of Rs.15,000/- demand for bond from Reserve has been placed.

(7) That since the compensation as per the Agricultural Land Act has been paid, there would

not arise any question of payment of compensation in pursuance of the order of this Court

(8) That the possession of the land admeasuring 98 acres and 30 gunthas had been taken and award accordingly had been passed and even in the order of this Court, reference of land admeasuring 98 acres 30 gunthas was made and therefore, the contention of the petitioner about possession of the land admeasuring 115 acre was not correct and justified.

(9) That in the earlier writ petition being Special Civil Application No.332/95, this Court has made a reference of total excess land admeasuring 472.30 in which the area of the land admeasuring 98 acres 30 gunthas are covered and Mamlatdar, Amirgadh, by his order No.1/99 dated 30.12.99 passed award for Rs.15,150/under the provisions of the Agricultural Land Ceiling Act and therefore, there is no question of initiating proceedings under the Land Acquisition Act.

(10) That in 1960 non-measured land was shown as 941 acres and 34 gunthas, but thereafter, the land admeasuring 472 acres 30 gunthas were declared as excess land at that time, upon request of the petitioner's husband it was found that actual measurement of land was 902 acre 28 gunthas and not 941 acres 34 gunthas and after considering all factors the award under the Agricultural Land Ceiling Act had been passed.

(11) That the construction of Dam was completed in the year 1973 and possession had been taken on 27.3.82 and the possession had been passed on to the Irrigation Department by the Revenue Department on 5.3.86 and award had been published under the Agricultural Land Ceiling act.

After having taken into consideration the relevant facts and circumstances, the claim made in the writ petition and the challenge against it and the submissions raised before us and the relevant proposition of law, direction for reconsideration of the claim made in para 27(b) of the petition is required to be issued so that if the petitioner is found entitled to compensation as claimed in the petition, if not paid after considering the land involved in this petition, and the resultant relief sought, are required to be issued.

The respondent authority is directed to first reconsider and if no amount of compensation under the law is thus far paid, in respect of the petitioner's land bearing survey No.42/1 admeasuring 98 acres 30 gunthas situated in the sim of village Umarkot, Tal: Palanpur, Dist. Banaskantha, pay permissible available amount of compensation, after observing necessary and requisite procedure in respect of the parcel of land. If this parcel of land has already been covered by the award or if this parcel of land is compensated, the authority concerned shall, accordingly, send reply, in this connection to the petitioner within a period of three months from the date of certified copy.

With the above observations and directions, the petition stands disposed of. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)
(vjn)